

ESTTA Tracking number: **ESTTA649938**Filing date: **01/14/2015**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Nodding Head Brewery		
Entity	LLC	Citizenship	Pennsylvania
Address	1516 Sansom St FL2 Philadelphia, PA 19102 UNITED STATES		

Correspondence information	Curt Decker owner Nodding Head Brewery 1516 Sansom St FL2 Philadelphia, PA 19102 UNITED STATES noddinghead@earthlink.net Phone:2158822380
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Registration Subject to Cancellation

Registration No	4478085	Registration date	02/04/2014
Registrant	Strayhan Investments, Inc 2004 Capitol Avenue Sacramento, CA 95814 UNITED STATES		

Goods/Services Subject to Cancellation

Class 032. First Use: 2006/07/01 First Use In Commerce: 2006/07/01
All goods and services in the class are cancelled, namely: Beer, ale, lager, stout and porter; Beers

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	Monkey Knife Fight		
Goods/Services	Beer, ale, lagers		

Attachments	Nodding Head Petition.pdf(138547 bytes)
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	Exh_A-E(1).pdf(5806264 bytes) Exh_F-L(1).pdf(3401582 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Curt Decker/
Name	Curt Decker
Date	01/14/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
THE TRADEMARK TRIAL AND APPEAL BOARD**

NODDING HEAD BREWERY,

Petitioner,

v.

STRAYHAN INVESTMENTS, INC.

d/b/a RUBICON BREWING COMPANY,
FIGHT

Registrant.

:

:

:

Cancellation Proceeding No.

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:

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:

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Registration No. 4,478,085

:

Mark: MONKEY KNIFE

:

Issued: February 4, 2014

:

:

PETITION TO CANCEL TRADEMARK REGISTRATION

Electronic Filing

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Sir:

Petitioner, Nodding Head Brewery (“Nodding Head” or “Petitioner”), files this petition to cancel the registration of the trademark “MONKEY KNIFE FIGHT” under Registration No. 4,478,085 (the “Rubicon Registration”) because Nodding Head properly owned and used the trademark “Monkey Knife Fight” (the “Mark”) in connection with the sale of beer, ale, and lager, well before any alleged use of the same trademark by Rubicon Brewing Company (“Rubicon” or “Registrant”); Nodding Head has continued to use the Mark since at least 2001; and Rubicon obtained the Rubicon Registration through intentional misrepresentations made to the US Patent and Trademark Office.

Should the Rubicon Registration not be cancelled, Nodding Head will be severely damaged and will continue to be harmed by the improper registration of Rubicon. Moreover, the

obtaining of the Rubicon Registration by Rubicon is a direct breach of the agreement entered into between Nodding Head and Rubicon many years ago, but which Rubicon has apparently decided to improperly and without reason renege upon.

The record owner of the Rubicon Registration is Strayhan Investments, Inc. having an address of 2004 Capital Avenue, Sacramento, California 95814.

As grounds for the petition to cancel the Rubicon Registration, Petitioner states as follows:

Nodding Head Creation of and Use of “Monkey Knife Fight” as a Beer Trademark

1. Beginning in 2001, Nodding Head Brewery created a lemon-grass and ginger spiced pale beer or lager to be served at a restaurant as part of a Vietnamese beer dinner event.

2. As shown in **Exhibit A**, noting “events for November 2001,” Nodding Head brewed, served and sold Monkey Knife Fight beer no later than November 2001.

3. Thereafter, in response to continued demand for the Monkey Knife Fight beer, Nodding Head continued to brew, market and sell the beer / pale lager called Monkey Knife Fight.

4. Beginning in November 2001, Nodding Head brewed and sold the Monkey Knife Fight beer. Such brewing and sales continue today.

5. At least as early as October 2002, and each year thereafter, Nodding Head marketed and served its Monkey Knife Fight beer at the Great American Beer Festival, which is held annually each October, in Denver, Colorado.

6. Nodding Head Brewery registered with the Pennsylvania Liquor Control Board (“PLCB”) the Monkey Knife Fight name for its beer in 2002, and has renewed that registration with the PLCB every year since 2002.

7. Customer knowledge of, acceptance of, and desire to purchase the Monkey Knife Fight beer grew rapidly during and after the 2001 time frame.

8. By way of one example, an Internet posting in May 2002 by Realbeer.com identifies in its article “Great Names for Excellent Beers,” Monkey Knife Fight from Nodding Head Brewing in Philadelphia. See Exhibit B.

9. Another example is the posting in the Beeradvocate.com of March 27, 2002 showing Monkey Knife Fight as brewed by Nodding Head Brewery and Restaurant in Philadelphia, and having a rating of 84 from 26 ratings. See Exhibit C.

10. Further, in the 2005 publication of the book Pennsylvania Breweries, by Lew Bryson, there is a description of the several beers brewed year-round by Nodding Head, including Monkey Knife Fight. See Exhibit D.

11. Indeed, knowledge of the Nodding Head Monkey Knife Fight beer spread across the United States.

12. As shown by the **Exhibit E** article from the San Francisco Weekly (www.sfweekly.com), knowledge of Nodding Head’s Monkey Knife Fight beer was known in San Francisco, California, no later than October 2002.

13. The **Exhibit E** article relating to general usage of the “monkey knife

fight” term with respect to various services and goods, specifically identifies “Nodding Head Brewing in Philadelphia [as] produc[ing] a beer called Monkey Knife Fight, which is apparently quite good.”

14. Today Nodding Head continues to brew, market and sell its Monkey Knife Fight beer on a year-round basis.

15. Nodding Head brews approximately 50 barrels or about 1550 gallons of Monkey Knife Fight beer annually, and it is one of Nodding Head’s best known, and most requested beers.

16. The Monkey Knife Fight production is a substantial portion of Nodding Head’s total annual production, being about 7% of the total annual beer production.

Learning of the Rubicon Brewing Usage of the Mark in 2008

17. In or about August 2008, Nodding Head learned of a micro-brewery in California, called Rubicon Brewing, that had begun to brew and sell a beer called Monkey Knife Fight.

18. Very soon after learning of Rubicon Brewing, Nodding Head contacted Rubicon Brewing by email to advise that Nodding Head Brewing has “had a beer called Monkey Knife Fight since 2001.” Nodding Head further explained that “[w]e originally brewed [the Monkey Knife Fight] for a Vietnamese beer dinner at a popular Philadelphia restaurant, but it became so popular that it has since been our top selling summer seasonal.” See Exhibit F.

19. Nodding Head followed up shortly thereafter to note to Rubicon Brewing that others in California knew of Nodding Head’s Monkey Knife Fight beer, and specifically pointed out the SFWeekly article. See Exhibit G, referencing the Exhibit E article.

20. Thereafter, between 2008 and 2013, Curt Decker of Nodding Head, and Glynn Phillips of Rubicon Brewing had several telephone discussions about the Monkey Knife Fight trademark as created and used by Nodding Head, and Rubicon’s copying and use of that name.

21. During those discussions, Mr. Phillips admitted that the Rubicon Brewing brewer saw the Monkey Knife Fight name as used by Nodding Head, and liked it so much, that he decided to copy it and use it as well. Such copying and usage by Rubicon Brewing was not authorized or agreed to by Nodding Head.

22. Apparently Rubicon Brewing believed that because Nodding Head was on the other side of the country, Nodding Head would not hear or see of the improper usage of the Monkey Knife Fight trademark by Rubicon Brewing. They were wrong.

The Agreement Between Nodding Head and Rubicon

23. In an attempt to be fair and reasonable, especially as between two micro-breweries, Nodding Head agreed to allow Rubicon Brewing to continue to use the Monkey Knife Fight trademark on its beer “as long as the [Rubicon] beer was in the state of California.”

24. Mr. Phillips acknowledged that such an agreement was fair and that

Rubicon would agree to only use the Monkey Knife Fight trademark on its beer in California.

Rubicon's Reneging on the Agreement and Misuse of the Mark

25. Later, in September 2013, Nodding Head was unpleasantly surprised to find that Rubicon Brewing, under the alias of Strayhan Investments, Inc., had earlier that year filed a trademark application with the U.S. Patent and Trademark Office for the mark "monkey knife fight" as used in connection with "beer, ale, lager, stout and porter; beers."

26. In that application, filed under Application Serial No. 85/973,150 on June 28, 2013, Rubicon / Strayhan alleged to have been using the "monkey knife fight" since July 1, 2006.

27. The July 1, 2006 date is well after the 2001 first use date of the "monkey knife fight" trademark by Nodding Head.

28. Nodding Head immediately contacted Rubicon about this apparent breach of the agreement entered into between Nodding Head and Rubicon. The email communication from Mr. Decker to Mr. Phillips is attached as **Exhibit H**.

29. In that email communication, Mr. Decker requested that Rubicon reconsider pursuing a trademark registration and indicated that he would rather do business as they had previously agreed, as gentlemen, and with Rubicon abiding by their prior agreement.

30. In response, Mr. Phillips advised that he was "remiss" in not calling Mr. Decker, and that "[t]hings have not changed and I will explain later." See **Exhibit I**.

31. During later telephone discussions between Mr. Phillips and Mr. Decker, Mr. Phillips again acknowledged the prior agreement by Rubicon, and acknowledged that Rubicon would abide by that prior agreement to not use the "monkey knife fight" trademark on beer outside of California.

32. Mr. Phillips also represented to Mr. Decker that Rubicon would not go forward with their trademark application unless and until documentation was approved by Nodding Head.

33. Thereafter, and earlier this year, Nodding Head was shocked to find that Rubicon and Mr. Phillips had once again reneged on their agreements with Nodding Head and Mr. Decker.

34. More particularly, Rubicon did not withdraw its trademark application from the US Patent and Trademark Office, and instead continued that process to obtain a trademark registration for the mark "monkey knife fight" as used on "beer, ale, lager, stout and porter; beers." That trademark registration, in the name of Strayhan Investments, was granted Registration No. 4,478,085, defined above as the Rubicon Registration.

35. The registration date for the Rubicon Registration is February 4, 2014.

36. In a May 7, 2014 email from Mr. Decker to Mr. Phillips, Nodding Head advised Rubicon of Nodding Head's discovery of the Rubicon trademark registration, Rubicon's repeated reneging of their prior agreements, and Nodding Head's

frustration with Rubicon's apparent underhanded business dealings. See Exhibit J.

37. In response, Mr. Phillips again appeared to acknowledge Rubicon's missteps, and again acknowledged that Rubicon would abide by the prior agreements as between Nodding Head and Rubicon, or at least Mr. Phillips acknowledged that he "will not dishonor our agreement." See Exhibit K.

Rubicon's Misrepresentations Made to the US Patent and Trademark Office

38. As part of application process by Rubicon seeking registration of the trademark "monkey knife fight" for use in connection with beer, ale, and lager, counsel for Strayhan Investments / Rubicon made certain representations and declarations.

39. More particularly, counsel for Rubicon represented to the US Patent and Trademark Office that "no other person, firm, corporation, or association has the right to use the ["monkey knife fight"] mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, . . . to cause confusion, or to cause mistake, or to deceive" the public regarding the source of the beer products being commercialized.

40. Specifically, counsel for Rubicon represented and declared that: "[t]he undersigned, *being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001*, and that such willful false statements, and the like, *may jeopardize the validity of the application or any resulting registration*, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief *no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive*; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true." (Emphasis added). See Exhibit L.

41. While Rubicon's counsel may not have known or been aware of the extended history between Nodding Head and Rubicon, including Rubicon's knowledge of Nodding Head's long history of using the identical trademark, "monkey knife fight" in connection with beer before any such usage by Rubicon, and Rubicon's several agreements with Nodding Head not to market or sell any "monkey knife fight" beer outside of California, surely Rubicon was well aware of such facts.

Yet Rubicon authorized its counsel to make the intentional misrepresentation that "no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to . . . cause confusion, or to cause mistake, or to deceive."

42. Rubicon plainly knew such a representation by its counsel and / or by

Rubicon was fraudulent.

43. Nodding Head believes that the above misrepresentation by Rubicon was intentional, and made with the specific purpose of improperly obtaining the trademark registration it later obtained.

WHEREFORE, Petitioner Nodding Head respectfully requests that the registration of the mark “monkey knife fight” provided under Registration No. 4,478,085 be canceled under 15 U.S.C. §§ 1052(d), 1064(3) because (a) the Rubicon Registration and trademark is identical to the “monkey knife fight” trademark previously used by Nodding Head Brewing in the United States, which has not been abandoned by Nodding Head, and which when used by Rubicon in connection with beer, ale, lager or related products, will cause confusion, mistake or deceive the public; and (b) the Rubicon Registration was obtained and has been maintained through fraudulent representations made to the US Patent and Trademark Office.

Nodding Head submits the required filing fee with this petition.

Respectfully submitted,

Dated: January 14, 2015



Curt Decker, Owner
Nodding Head Brewery
1516 Sansom Street
Second Floor
Philadelphia, PA 19102

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Petition to Cancel was served upon the following entities of record on January ___, 2015 in the manner identified:

By Federal Express and made available through the TTAB ESTTA system

Strayhan Investments, Inc.
d/b/a Rubicon Brewing Company
2004 Capital Avenue

Sacramento, California 95814

Scott Hervey, Esquire
Weintraub Tobin
9665 Wilshire Blvd., 9th Floor
Beverly Hills, California 90212

A handwritten signature in black ink, appearing to read "Curt Decker", written over a horizontal line.

Curt Decker

Exhibit A



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Noon-5PM · Holidays - call for hours

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« November 2001 »						
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25	26	27	28	29	30	

[\[Display as Calendar\]](#) [\[Display as List\]](#)

Events for November 2001

Nodding Head Vietnamese Beer Dinner *November 12, 2001* - Fork (Philadelphia)

Fork, the American bistro and bar at 306 Market Street in Philadelphia, is hosting a beer dinner featuring over 14 authentic Vietnamese dishes prepared by Sous-Chef Thien Ngo paired with the beers of Nodding Head Brewery's Brandom Greenwood. Nodding Head's Berliner Weiss will be served at the opening reception and a Coconut Flan dessert will be matched with Wee Heavy. In between, Greenwood will serve an all-star lineup of brews to complement a customary Vietnamese menu: Fool's Gold (Philadelphia Magazine Best of Philly 2001), Monkey Knife Fight Lager (pale lager spiced with lemon grass and ginger, created especially for the dinner), Harvest Ale & Whiplash IPA. 6:30 PM, \$55 including tax and gratuity. 215-625-9425

<http://www.forkrestaurant.com>

Beers of Southampton Publik House *November 13, 2001* - Monk's Cafe

This Long Island brewpub has developed a great reputation for its beers and this is a rare local opportunity to see what the fuss is all about. As with every monthly beer dinner at Monk's, the brews will be carefully paired with appropriate items from the menu. 7 PM Price: \$55, including tax and tip. Monk's Cafe, 264 S. 16th St. 215-545-7005 www.monkscafe.com

Victory Beer Dinner *November 15, 2001* - 110 Restaurant & Bar, Wayne

The Beer Yard and Victory Brewing Company of Downingtown will combine to present a Beer Dinner at Wayne's popular 110 on Thursday, November 15. Chef Chris Todd's New American Cuisine will be matched with Victory's fine beers. Victory's Bill Covalleski will be on hand to talk about his beers, which will include Golden Monkey, Kolsch, Varietal Pils, HopDevil IPA, Festbier & Storm King Imperial Stout. Cocktail hour & three-course dinner: \$65.00, including tax and tip. Reservations required. 610-687-8333

Great Brews of America *November 17, 2001* - Split Rock Resort, Poconos

The 10th Annual Great Brews of America Classic Beer Festival at Split Rock Resort at Lake Harmony in the Poconos will be held on November 17 & 18. This is one of the top festivals on the East Coast and will feature over 50 breweries and 200 different brews this year. Noon-5 PM both days. Advance tickets: \$18.00; \$22.00 at door; Group (25 or more prepaid): \$15.00 Designated Driver tickets: \$5.00. People Under 21 are not permitted. Call 1-800-255-7625 for more information and tickets. <http://www.splitrockresort.com>

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Exhibit B



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Dec 12, 2014

Beer Break Vol. 2, No. 32

Great names for excellent beers

May 23, 2002

Beer Break

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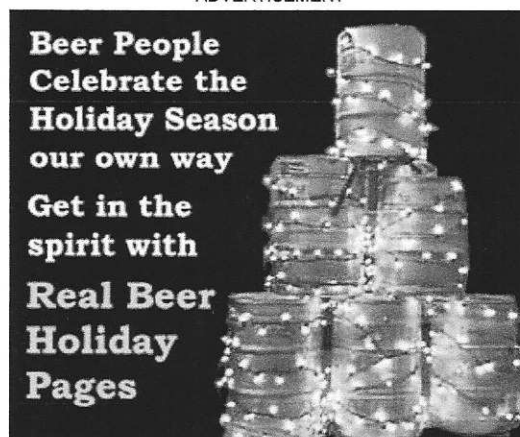
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Search

Find whatever in the beer world you are looking for. Enter a search word or phrase, then click GO.

First, thanks to all of you who submitted favorite beers names. Even though we may not post your nomination here we appreciate your input. We'll keep all the names on file, because we may do this again in six months or a year.

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Second, here's a valid argument made by Paul Jasper, who wrote us:

"Well, my favorites are ones that project a sense of quality and tradition (like [Fullers](#) London Pride, Anchor Steam, Greene King XX Mild or Salopian Golden Thread) or are an amusing way to attract attention to a well-made and delicious beer (such as Titanic Brewery's Lifeboat Ale or [Marin Brewing's](#) Blueberry).

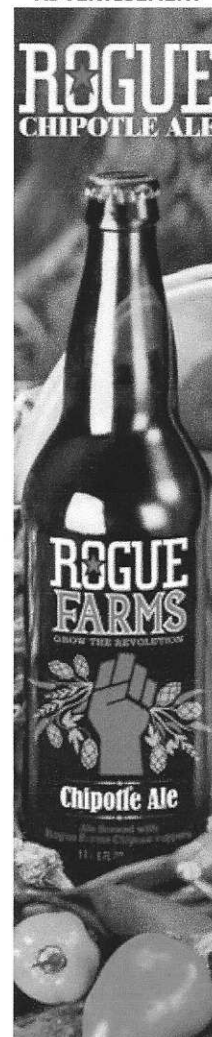
"What I'm not too fond of is beers that sell just because they have a gimmicky name. If I entered a bar where everyone was drinking huge quantities of [Arrogant Bastard Ale](#) or Old Leghumper, I think I'd leave as quickly as possible. These are names that are designed to appeal to an easily influenced and immature audience. There's no future for craft beer if consumers are swayed by novelty names in the same way they are by novelty commercials for Bud, Miller and the current fashion of alcohol-laced soda."

A fair point, except that [Arrogant Bastard](#) and Old Leghumper are actually quite tasty beers. The name submitted by more readers than any other was Moose Drool from Big Sky Brewing in Missoula, Mont., pretty surprising given that it doesn't exactly enjoy national distribution. We doubt so many of you would have taken the time to write if the beer actually tasted like moose saliva. One reader wrote: "The name got me started, but the delightfully consistent brown ale inside keeps me there!"

Paul is correct, the future of flavorful beer depends on flavor. So here - and we admit our choices are arbitrary - are 10 really good beers with really good names that our readers submitted:

- Skull Splitter from the Orkney Islands of Scotland
- (Theakston) Old Peculier from Northern England (that's a revival of the medieval spelling, which is part of the appeal)

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- Immort Ale from Dogfish Head in Delaware
- Yellow Snow Ale from [Rogue Ales](#) in Oregon
- Burning River Pale Ale from Great Lakes Brewing in Ohio
- Monkey Knife Fight from Nodding Head Brewing in Philadelphia
- DUIPA from Hoptown Brewery in California
- Back Hand of God Stout, an organic ale from Crannog Ales in British Columbia
- Blithering Idiot Barley Wine from Weyerbacher Brewing in Pennsylvania
- Old Horizontal Barley Wine from Victory Brewing in Pennsylvania (yes, because we love the idea of doing a vertical tasting of Horizontal)

Two we'd like to try, mostly because of the names but also because we've heard good things about the beer: Erin Go Braless from Kettlehouse Brewery (like Big Sky, located in Missoula, Mont.) and Dogs Bollocks, a British cask ale that Paul Pearson wrote us about.

Then there is the flip side of the coin. Alan Tobey writes: "Don't ignore 'the Duff Beer of China' -- Shanghai's immortal Reeb Beer. Yes, indeed, 'beer' spelled backwards, a new high in marketing laziness. Tastes just like Duff, too, alas...."

Finally, a lovely story from reader Sam Alison:

"Another great one which has taken on a life of it's own due to some language confusion is the Slovak made Smadný Mních, or Thirsty Monk. The reason this has become even more entertaining for us is that when I first drank it my girlfriend was trying to translate it for me and was explaining that it meant 'thirsty, what's the opposite of a nun?' I preferred the answer of 'prostitute,' so from that time on we now head down to the bar for a 'Thirsty Prostitute' or two :-)"

Pairing of the week

In keeping with our beer names theme, here's a pairing we look forward to trying in the near future: Avery Brewing's Salvation and Stone Brewing's Ruination IPA. Based on the names, the idea would be to drink the latter and then the former, but you'll see that might not be the best approach.

Salvation was recently released to complete Avery's "Holy Trinity" along with Reverend (a Belgian quad) and Hog Heaven (a barley wine). It is a Belgian-style golden ale (9% alcohol by volume), lavishly dry hopped with Styrian Goldings.

Stone Ruination IPA will be released June 10, and is Stone's first new year-round beer since [Arrogant Bastard Ale](#) more than four years ago. It is patterned after the Stone Anniversary IPAs, weighing in at 100+ IBUs (International Bitterness Units) and 7.7% abv. The bottle's label states the name was chosen, "because of the immediate ruinous effect on your palate."

So while it is an appealing thought that you could start down the road to ruin, then turn toward salvation - the fact is that the better way to do the pairing is probably to start with sweeter Salvation and save the hop monster for second.

Tasting notes

ZLATOPRAMEN LAGER

Brewed by Zlatopramen in the Czech Republic

Stephen Beaumont writes:

"... hints of green apple and caramel in the rounded aroma and a dry body holding notes of fresh-mowed grass and hay. There is a hint of alcohol on the dry, earthy finish."

THEAKSTON OLD PECULIER

Brewed in Northern England

Micheal Jackson writes: "... has a soft and oily body; flavors reminiscent of milk chocolate; and a raisiny, blackcurrent dryness in the finish. It is a soothing and sustaining brew."

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Exhibit C

http://www.beeradvocate.com/beer/profile/1042/315

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Monkey Knife Fight - Nodding Head Brewery and Restaurant

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BA SCORE

84

good

26 Ratings

THE BROS

-

no score

(send 'em beer!)

Ratings: 26

Reviews: 17

rAvg: 3.7

pDev: 14.32%

Wants: 3

Gots: 2 | FT: 0

Brewed by:

Nodding Head Brewery and Restaurant

Pennsylvania, United States

Style | ABV

Herbed / Spiced Beer | 4.50% ABV

Availability: Rotating


Notes/Commercial Description:

No notes at this time.

(Beer added by: BeerAdvocate on 03-27-2002)

View: Beers (38) | Place Ratings (159) | Events

Beer Ratings & Reviews



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Other Beer Style Examples

Herbed / Spiced Beer

Midag Touch
(Dogfish Head Brewery)

Chateau Jahu
(Dogfish Head Brewery)

Juniper Pale Ale
(Rogue Ales)

2XMAS
(Southern Tier Brewing Company)

Grand Archa (Grand Archa)

11:29 AM
12/18/2014

Exhibit D

https://books.google.com/books?id=55VutShgM... Monkey Knife Fight | Nodding ... Pennsylvania Breweries - Le... x

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Pennsylvania Breweries
By Lew Bryson

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About this book

32 • *City of Brotherly Brewers: Philadelphia*

buzz chased itself till it wore out. Then suddenly the word was out: Nodding Head.

Owners Curt Decker and Barbara Thomas (Tom Peters's wife) ripped out the old extract brewhouse and put in a specially designed, very compact JV NorthWest brewhouse. Large parts of the engineering were done by brewer Brandon Greenwood. Brandon had brewed in Philadelphia at Red Bell and at Yards, and he has a strong technical background with a degree from Herriot-Watt, a famed Scottish brewing school. Now he had a brewery of his own, and the curiosity about what he would do was intense.

So was the disappointment when those first beers came out at an opening that may have been somewhat rushed; they were largely undistinguished. Greenwood is, as always, painfully honest about them. "We opened with the first three beers I made at this brewery," he recalled. "Was I happy? No. Was it necessary? Yes. Was it a good thing to do, in retrospect? No. But by the end of that first year, I had a

Beers brewed: Year-round: Grog (GABF Gold, 2002; RAF Silver, 2003), 700 Level Ale. Seasonals: Ich Bin Ein Berliner Weisse (GABF Silver, 2003, 2004), BPA, 3C Double IPA, Monkey Knife Fight, 60 Shilling (GABF Silver, 2003), Chocolate Stout, Sledwrecker Winter Ale, Pilsner (GABF Bronze, 2002), Abbey Normal.

The Pick: Grog does it for me. This is the quintessential session beer, and the fruits of Brandon's obsession: tasty stuff that you can keep drinking and still make a political argument that will at least befuddle your opponent, if not convince him. Great pub beer.

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Exhibit E

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WE HAVE NFL SUNDAY TICKET
20+ FLAT SCREENS AND
4 MEGA SCREENS

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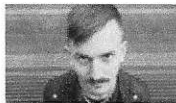
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You Grab the Monkey; We'll Bring the Knife

Monkey Knife Fight is everywhere, but what — oh *what* — does it mean?

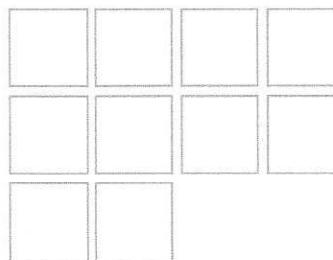
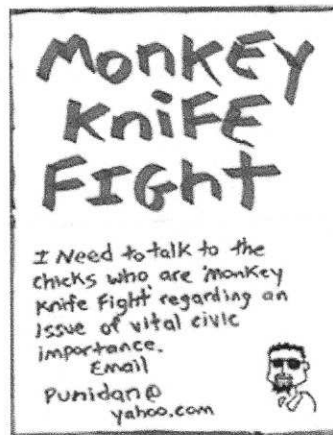
By Dan Siegler
Wednesday, Oct 23 2002

Comments 7

Say the words "Monkey Knife Fight" to anyone who lives in the Mission District, and you'll probably get one hell of a reaction. Prepare to be grabbed by your lapels and thrown a look of excitement and confusion, as if you somehow entered the person's dreams last night: *"What is that?! Tell me! TELL ME!"*

"Monkey Knife Fight" is everywhere in our little neighborhood: spray-painted via stencil on sidewalks, slapped up as miniposters on buildings, strewn in the form of stickers in bathrooms. And it's not just the Mission. There have been MKF sightings in SOMA, Noe Valley, the Inner Sunset, the Western Addition, and Alamo Square Park. Everyone's seen it, yet nobody seems to know what it is. No three words have ever inspired such bafflement and curiosity — not even the infamous "Yuppie Eradication Project." To give you an idea how big this thing is, consider: Monkey Knife Fight has imitators. "Junky Wife Bite" is now appearing throughout the Mission, and "Worm Knife Fight" can be spotted in Noe Valley.

Naturally, we are compelled to investigate this holy grail of San Francisco mystery graffiti. We



try the Internet first, and from a five-hour, caffeine-fueled Google search, we learn the following:

- A team named Monkey Knife Fight competed (poorly) in a recent trivia contest at Williams College in Massachusetts.
- A cartoonist from God knows where used to call himself "The artist formerly known as Monkey Knife Fight" but now calls himself "Anarchy in UTK." (Presumably, at some point long ago, he called himself "Monkey Knife Fight"; this apparent fact, however, could not be confirmed.)
- Monkey Knife Fight is not an uncommon name for a band. We confirm the existence of MKF bands from Boston, Mass.; Townsville, Australia; and Dunedin, New Zealand. We also discover leads pointing to possible bands in West Virginia and Connecticut. Strangely, nothing band-related points to San Francisco.
- Nodding Head Brewing in Philadelphia produces a beer called Monkey Knife Fight, which is apparently quite good.
- An actual monkey knife fight occurred on a yacht in international waters on Jan. 23, 2000, during *The Simpsons*, Episode No. BABFo8, with Britney Spears as the guest voice. A monkey named Furious George was seriously injured. Britney Spears was unharmed.
- Monkey Fight, Monkey Dogfight, Monkey Race, Super Monkey Ball, Monkey Golf, and Monkey Tennis are Sega video games, and have nothing to do with Monkey Knife Fight.

For the first time ever, Google has failed us. Later that night, we hit the streets, dazed yet determined. We pay a visit to Bret at Leather Tongue Video. If you don't know Bret ... OK, scratch that. Everyone knows Bret, the most likable and unpretentious guy in the Mission. He's the pre-eminent word-on-the-street kind of dude. "Bret, I've got three words for you," we say, swaggering into the store like John Wayne. "Monkey Knife Fight." Bret gives us a cool smile. Holy shit, he knows what it means! He knows! It takes every ounce of energy to contain our excitement. But Bret's got to help a customer, so we're forced to wait.

We peruse the videos, and as fate would have it, our eyes are drawn to Terry Gilliam's *Twelve Monkeys*. The back of the box reads, "Between the past and the future, sanity and madness, dreams and reality, lies the mystery of the Twelve Monkeys" We feel a sudden chill. Bret disposes of his customer and turns his attention back to us. "It doesn't mean anything," he explains. "It's just these three girls who go around tagging everything with "Monkey Knife Fight."

We're incredulous.

"Nothing?" we ask incredulously. "You've met these people?"

"Yeah, three girls who were bored or something," he says. "They hang out at the 500 Club."

So we spend the entire weekend interrogating every living creature in or around the 500 Club. Everybody's intrigued; nobody knows a damn thing. At this point, things start to get strange. At the end of each night's work, we post signs. *We need to talk to the chicks who are Monkey Knife Fight regarding an issue of vital civic importance. Email punidan@yahoo.com.* Mysteriously, each morning our signs are gone.

By Sunday evening, we're feeling more than a little delirious. We've expanded our street interrogations to the entire Mission, and we're not doing it very tactfully, either. It's with some horror that we realize our adventure has turned into that damn *Twelve Monkeys* film. We've become like that Bruce Willis character, half-crazed, drooling, lurking around the city, examining obscure graffiti while screaming, "Monkey Knife Fight! Monkey Knife Fight!" to a frightened and perplexed citizenry. Jesus. Couldn't we at least have become Brad Pitt? To top it all off, in a follow-up visit to Bret we're informed that he was wrong. The three girls were involved in a monkey-related venture, but not Monkey Knife Fight. Doh!

After a couple of days' rest, we start up again. We decide to visit some record shops, since the most popular theory is that it's a band. First stop: Amoeba Music. Wouldn't you know it, there's an MKF sticker right there on one of the computer terminals. I ask a clerk. She has no idea. I point to the sticker. She shrugs. She asks her co-workers, and they all do a little synchronized shrug. We visit Mission Records, Aquarius Records, and practically every other record shop in town, interrogating music experts of every color and creed. We fail to meet a single person who has actually seen this band. So, we're able to pretty much rule out the band possibility. But that doesn't solve the mystery.

We recruit some friends and follow any and every lead possible. We e-mail everyone under the sun. We call the S.F. Police's Graffiti Abatement Department. We ask DAVE of the infamous DAVE posters. We study the tactics of Chaka, from the Chaka campaign of 1990. We do a Lexis/Nexis search, which essentially covers every printed English word on the planet. We post an ad on Craigslist. We contact radio stations. A DJ from KUSF even makes an announcement on the air. Nothing, nothing, nothing.

Hunting around SOMA late one night, we reminisce about an unfortunate tagging incident from our college days. We were involved in Amnesty International, and each year we'd have a promotional concert called Jamnesty, which featured local bands and petitions and all that. We came up with a covert advertising campaign. A month before the event, we'd cover the campus with JAM stickers and posters and signs. Just JAM -- that's it. We'd get the campus all interested and excited and abuzz, and then a week before the event, we'd reveal the Jamnesty link. Except it didn't go that way. Somehow, a rumor got started that JAM was a secret signal to the pledges of a fraternity, Phi Beta something-or-other. Phi Beta gladly accepted responsibility, and in no time, the entire campus believed JAM was a frat thing. When our Jamnesty campaign was finally revealed, it was too late. The Phi Beta Fuckheads had stolen our thunder.

Which brings us back to Monkey Knife Fight. What's to stop some megacorporation like Nike or Wal-Mart or Philip Morris from seizing the campaign and calling it its own? We begin having recurring nightmares about such a doomsday scenario. In our dream, we're desperately trying to call a friend or family member or somebody. But every number we dial, all we hear is that haunting AOL Moviefone guy's voice. Over and over and over. *Hello, and welcome to AOL Moviefone! If you would like to see the new Tom Cruise film, Monkey Knife Fight, press 1!* The nightmares are so horrific and upsetting that we quit the venture entirely.

And then, out of nowhere, we get an ominous e-mail: "The first rule of Monkey Knife Fight is that you do not talk about Monkey Knife Fight." Wait a minute. That's a reference to the movie *Fight Club* ... a movie starring Brad Pitt! The same Brad Pitt who starred in *Twelve Monkeys*! Holy guacamole -- Brad Pitt's the culprit! Brad Pitt, the gorgeous Hollywood heartthrob! Brad Pitt, the darling husband of Jennifer Aniston! Brad Pitt, the blue-eyed hunk who made a million women moan in *Thelma & Louise*! Brad Pitt, right here in our very own neighborhood! What a fucking ASSHOLE!

We prepare a list of questions for the evil Brad Pitt:

- What does "Monkey Knife Fight" mean?
- Why are you doing this?
- Why did you choose the Mission? Is it because we're the best?
- Why "Monkey Knife Fight"? Why not "Platypus Tea Party" or "Vampire Booty Call"?
- Why Jennifer? She's really not that cute, you know.

We're on the Web, trying to find contact information for Brad, when our roommate Amy comes in. She sees the list of Brad questions and literally smacks us upside the head. "What the hell are you doing?!" she screams. "Brad Pitt's not tagging the Mission, you asshole! Face it — you're never gonna solve your little 'Murky Life Fright,' or whatever the hell it's called. You've been beaten. It's over!"

She's right. It is over. Not only did her vicious backhand bring us back to reality, it also brought home the tragic irony of our pursuit. After all, the phrase "Monkey Knife Fight" is sometimes used to describe a senseless bloody battle. And that's exactly what we've waged. Heck, maybe that was the whole point.

It's with this realization that we come up with a theory. "Monkey Knife Fight" means NOTHING. It's just the work of some punk-ass street artist who needed something to do. It means nothing and everything, both at the same time. That's the beauty of it, the genius, really. We here at Dog Bites would like to stress that this is a theory, not fact. But that doesn't make it any less important. Most everything Einstein did was, and still is, theory. Some things in the universe are just damn hard to prove.

Tags: Feature, Featured Stories, Brad Pitt, Noe Valley, San Francisco, Britney Spears

About The Author



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COMMENTS

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Exhibit F

-----Forwarded Message-----

>From: Nodding Head <noddinghead@earthlink.net>

>Sent: Aug 4, 2008 12:43 PM

>To: glynnphillips@rubiconbrewing.com

>Cc: "Phillibeer@aol.com" <Phillibeer@aol.com>

>Subject: imitation is the sincerest form of flattery

>

>We were sitting around today and one of the staff told me that

>he saw something about a Monkey Knife Fight at another brewery.

>

>Just wanted to let you know that we've had a beer called Monkey Knife

>Fight since 2001. We originally brewed it for a Vietnamese beer

>dinner at a popular Philadelphia restaurant, but it became so

>popular that it has since been our top selling summer seasonal.

>

>Feel free to check out Tomme Arthur's Nodding Head jacket with

>the killer embroidered Monkey logo.

>

>While we don't have any plans for world domination, or even

>distribution outside of our city, we just thought you should

>know there's another Monkey out there....and he's got a knife.

>

>

>Cheers -

>

>

>Curt Decker

>Nodding Head Brewery

>215.569.9525t

>215.569.9526f

>noddinghead@earthlink.net

Exhibit G

-----Forwarded Message-----

>From: Nodding Head <noddinghead@earthlink.net>

>Sent: Aug 6, 2008 3:18 PM

>To: glynnphillips@rubiconbrewing.com, scottcramlet@hotmail.com

>Cc: "Phillibeer@aol.com" <Phillibeer@aol.com>

>Subject: even CA papers know

>

>See story from 2002....

>

>

>

><http://www.sfweekly.com/2002-10-23/news/you-grab-the-monkey-we-ll-bring-the-knife/>

>

>

>

>Have a great day!

>

>

>

>Nodding Head

Exhibit H

On Sep 25, 2013, at 9:43 PM, "Curt Decker" <noddinghead@earthlink.net> wrote:

Glynn -

Back when I first contacted you regarding the use of the name Monkey Knife Fight, a name we've been using since 2000, you admitted to me that your brewer loved our name and just decided to use it. I felt like I was very understanding, and in the spirit of craft beer and cooperation, agreed to allow you to use the name as long as the beer was in the state of California. Now with recent goings on involving different breweries and naming controversies, I was asked by someone again about Rubicon and our Monkey Knife Fight name. Imagine my surprise when I checked the Trademark Database and see a recent application for a federal TM on MY beer name.

I'd like you to reconsider your pursuit of a trademark on the name Monkey Knife Fight. I don't want to get all "legal" about things. I prefer doing business the way we did a few years ago: like gentlemen. I hope things haven't changed.

Hope all is well. Perhaps I'll see you in Denver.

Curt Decker
Nodding Head Brewery & Restaurant
215.882.2380w
noddinghead@earthlink.net
noddinghead.com

Follow us on Twitter @NoddingHeadBrew
Facebook Nodding Head Brewery

Exhibit I

-----Forwarded Message-----

From: Glynn Phillips
Sent: Sep 26, 2013 7:28 AM
To: Curt Decker
Subject: Re: Monkey Knife Fight

Curt,

I got your message and I'm just getting coffee in and getting kids to school. Are you available by phone today? I am remiss in calling you. Things have not changed and I will explain later.

Glynn Phillips
Owner / Beer Aficionado
2004 Capitol Ave
Sacramento, CA 95811
Work: [\(916\)448-7032](tel:9164487032)
Fax: [\(916\)448-4715](tel:9164484715)

Sent from my iPhone

On Sep 25, 2013, at 9:43 PM, "Curt Decker" <noddinghead@earthlink.net> wrote:

Glynn -

Back when I first contacted you regarding the use of the name Monkey Knife Fight, a name we've been using since 2000, you admitted to me that your brewer loved our name and just decided to use it. I felt like I was very understanding, and in the spirit of craft beer and cooperation, agreed to allow you to use the name as long as the beer was in the state of California. Now with recent goings on involving different breweries and naming controversies, I was asked by someone again about Rubicon and our Monkey Knife Fight name. Imagine my surprise when I checked the Trademark Database and see a recent application for a federal TM on MY beer name.

I'd like you to reconsider your pursuit of a trademark on the name Monkey Knife Fight. I don't want to get all "legal" about things. I prefer doing business the way we did a few years ago: like gentlemen. I hope things haven't changed.

Hope all is well. Perhaps I'll see you in Denver.

Curt Decker
Nodding Head Brewery & Restaurant
215.882.2380w
noddinghead@earthlink.net
noddinghead.com

Follow us on Twitter @NoddingHeadBrew
Facebook Nodding Head Brewery

Exhibit J

>-----Original Message-----

>From: Nodding Head [mailto:noddinghead@earthlink.net]

>Sent: Wednesday, May 07, 2014 9:58 AM

>To: Glynn Phillips

>Subject: Monkey Knife Fight

>

>Glynn -

>

>Well aren't I an idiot. I thought I could trust you as a gentleman, but it seems I was foolish. My brother who lives in Richmond, Virginia sent me the following link, which left me more than a little miffed:

>

>

>http://www.richmond.com/food-drink/article_5706f4ea-cf09-11e3-aa66-0017a43b2370.html

>

>

>I guess my next step is to take legal action, which at this point will include seeking damages as well as attaining exclusive rights to the name Monkey Knife Fight. I really am having a difficult time seeing any other way to go.

>

>

>Curt Decker

>Nodding Head Brewery

Exhibit K

-----Forwarded Message-----

>From: Glynn Phillips <glynn@rubiconbrewing.com>

>Sent: May 7, 2014 12:20 PM

>To: 'Nodding Head' <noddinghead@earthlink.net>

>Subject: RE: Monkey Knife Fight

>

>Curt,

>

>No it is me that is the idiot. My knowledge of the geography of the East is poor. I will not dishonor our agreement.

>

>Glynn Phillips - Owner / Beer Aficionado

>2004 Capitol Ave Sacramento, CA 95811

>Cell Phone: [916-832-4506](tel:916-832-4506)

>

>

>

>-----Original Message-----

>From: Nodding Head [<mailto:noddinghead@earthlink.net>]

>Sent: Wednesday, May 07, 2014 9:58 AM

>To: Glynn Phillips

>Subject: Monkey Knife Fight

>

>Glynn -

>

>Well aren't I an idiot. I thought I could trust you as a gentleman, but it seems I was foolish. My brother who lives in Richmond, Virginia sent me the following link, which left me more than a little miffed:

>

>

>http://www.richmond.com/food-drink/article_5706f4ea-cf09-11e3-aa66-0017a43b2370.html

>

>

>I guess my next step is to take legal action, which at this point will include seeking damages as well as attaining exclusive rights to the name Monkey Knife Fight. I really am having a difficult time seeing any other way to go.

>

>

>Curt Decker

>Nodding Head Brewery

Exhibit L

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85973150

Filing Date: 06/28/2013

To the Commissioner for Trademarks:

MARK: MONKEY KNIFE FIGHT (Standard Characters, see mark)

The literal element of the mark consists of MONKEY KNIFE FIGHT.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Strayhan Investments, Inc, DBA Rubicon Brewing Company, a corporation of California, having an address of

2004 Capitol Avenue
Sacramento, California 95814
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 032: Beer, ale, lager, stout and porter; Beers

In International Class 032, the mark was first used by the applicant or the applicant's related company or licensee predecessor in interest at least as early as 07/01/2006, and first used in commerce at least as early as 07/01/2006, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) BEER BOTTLE.

Original PDF file:

SPE0-21614218-160858978 . MKF-Bottle.pdf

Converted PDF file(s) (1 page)

Specimen File1

The applicant's current Attorney Information:

Scott Hervey of Weintraub Tobin
9665 Wilshire Blvd., 9th Floor

Beverly Hills, California 90212
United States

The applicant's current Correspondence Information:

Scott Hervey
Weintraub Tobin
9665 Wilshire Blvd., 9th Floor
Beverly Hills, California 90212
3108603304(phone)
trademarks@weintraub.com;shervey@weintraub.com; dmoreno@weintraub.com (authorized)

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /smh/ Date Signed: 06/28/2013
Signatory's Name: Scott Hervey
Signatory's Position: Attorney of record, California bar member

RAM Sale Number: 85973150
RAM Accounting Date: 07/01/2013

Serial Number: 85973150
Internet Transmission Date: Fri Jun 28 16:14:53 EDT 2013
TEAS Stamp: USPTO/FTK-216.14.2.18-201306281614532857
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DA-4029-20130628160858978635

MONKEY KNIFE FIGHT

